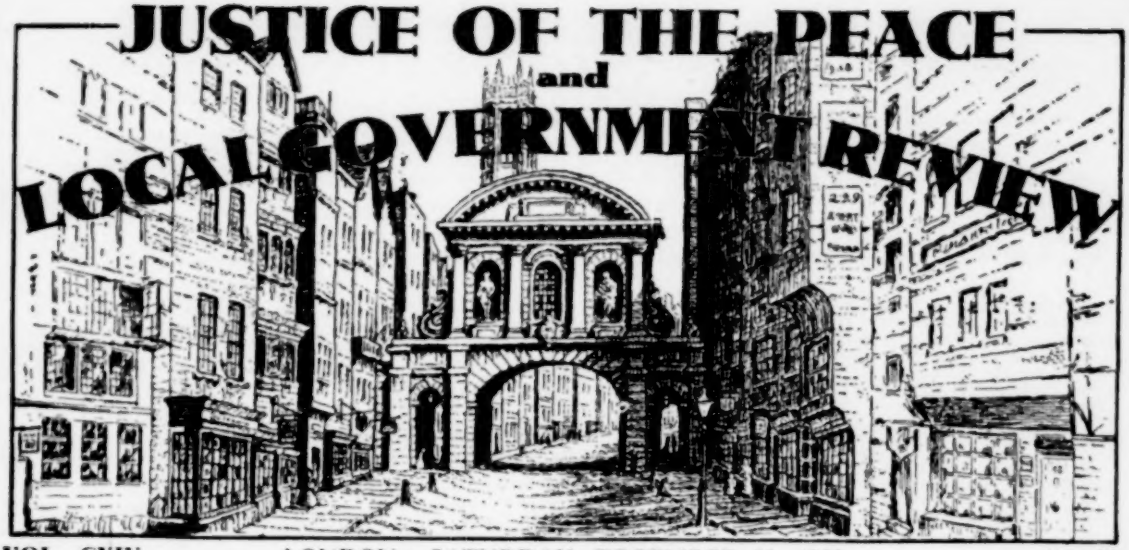

VOL. CXIV. LONDON: SATURDAY, DECEMBER 30, 1950. No. 52

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY BOROUGH OF IPSWICH

Appointment of Town Clerk and Clerk of the Peace

APPLICATIONS for this appointment are invited from solicitors with suitable local government experience. Particulars will be sent on application to me. The commencing salary for the appointment of Town Clerk will be within the appropriate salary range fixed by the Joint Negotiating Committee for Town Clerks and District Council Clerks for a local authority within the population group of 100/150,000 and the annual increments and conditions of service as fixed by that Committee will apply. Applications in the form described in the particulars must reach me by January 15, 1951. Canvassing will disqualify.

J. G. BARR,
Town Clerk.

Town Hall,
Ipswich.
December 20, 1950.

NOTTINGHAMSHIRE

Appointment of Female Probation Officer

THE Nottinghamshire Combined Probation Committee invite applications for the appointment of full-time Female Probation Officer, at a salary in accordance with the Probation Rules, 1949.

Forms of application with conditions of appointment may be obtained from my Office and completed forms must be received by me not later than January 10, 1951.

K. TWEEDALE MEABY,
Clerk of the Peace.

Shire Hall,
Nottingham.

COUNTY OF ESSEX

Petty Sessional Division of Walden

Appointment of Part-time Clerk to the Justices

APPLICATIONS are invited from solicitors or other duly qualified persons, for the appointment of Clerk to the Justices for the Petty Sessional Division of Walden in the County of Essex.

The present inclusive salary paid by the Standing Joint Committee is £371 per annum. The appointed Clerk will be required to provide office accommodation and to bear the cost of staff, books and stationery, and all expenses incidental to the office. The appointment is subject to the confirmation of the Secretary of State.

Applications, marked "Justices' Clerk," stating age, qualifications and experience, should be sent to me at the address given below, not later than January 16, 1951.

ERNEST F. WATSON,
Acting Clerk to the Justices.

14, Church Street,
Saffron Walden,
Essex.

WORCESTERSHIRE

Appointment of Whole-time Male Probation Officers

THE Combined Probations Areas Committee invite applications for the appointment of two whole-time Male Probation Officers.

The appointment and salary will be in accordance with the Probation Rules, 1949, and the successful applicants will be required to pass a medical examination. Age limits 23 to 40 years, except in the case of serving officers or persons otherwise qualifying for appointment under the Probation Rules.

The one officer will serve in an urban area. The other will serve in a more scattered, partly rural area, and will have to provide a car, for the maintenance of which an allowance would be made on the County Scale. A small flat can be made available for the officer in the latter area, if he is a married man.

Applications, stating age, qualifications and experience, with the names and addresses of three referees who can speak as to the applicant's work, to be received by the undersigned by January 15, 1951.

W. R. SCURFIELD,
Clerk of the Peace.

Shirehall, Worcester. (N.3.)

COUNTY BOROUGH OF SUNDERLAND

Appointment of Male Probation Officer
Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time male probation officer and a whole-time female probation officer for the above county borough. Applicants must be not less than twenty-three nor more than forty years of age, except in the case of whole-time serving officers.

The appointments will be subject to the Probation Rules, 1949. The salaries will be in accordance with the scale prescribed by the rules and subject to superannuation deductions.

The successful candidates will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than 10 *a.m.* on Monday, January 8, 1951.

J. P. WILSON,
Clerk to the Justices and Secretary of the Probation Committee.

Sessions Courts, Gilbridge Avenue,
Sunderland.

INQUIRIES

DIVORCE—DETECTIVE AGENCY. T. E. HOYLAND, **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. Observations; confidential inquiries and Process serving anywhere. Agents in all parts of the country. Own car.—1, Mayo Road, Bradford. Tel.: 26823, day or night.

COUNTY OF CUMBERLAND

Appointment of Male Probation Officer

THE County Combined Probation Committee invite applications for the appointment of a full-time male probation officer at a salary in accordance with scale.

The appointment will be subject to the Probation Rules, 1949, and medical examination.

Applicants must be between the ages of twenty-three and forty years unless a serving full-time probation officer.

The selected candidate may provide a motor car for which an allowance will be paid, or a car will be provided by the Committee.

Applications giving the names of two referees must be received by the undersigned not later than Saturday, January 6, 1951.

G. N. C. SWIFT,
Clerk to the Probation Committee.

The Courts,
Carlisle.

CITY OF SHEFFIELD

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of Senior Assistant in the Common Law section of the Town Clerk's department at a salary in accordance with Grade A.P.T. IV (£480 × £15—£525) of the scheme and conditions of service of N.J.C. for Local Authorities' Staffs. Applicants must have had substantial experience in a solicitor's office or in the Legal Department of a Local Authority.

Applications, stating age, qualifications, experience, present and previous appointments, accompanied by three recent testimonials, must reach me not later than January 15, 1951. The appointment is subject to a medical examination and terminable by one month's notice.

Canvassing, directly or indirectly, will disqualify.

JOHN HEYS,
Town Clerk.

Town Hall,
Sheffield.
December, 1950.

BOROUGH OF GODALMING

Appointment of Chief Assistant

APPLICATIONS are invited for the permanent appointment of Chief Assistant in the Town Clerk's department at a salary in accordance with A.P.T. Grade V (a) (£550-£610 per annum). The position will be the senior in the Town Clerk's department and, subject to satisfactory service for a reasonable probationary period, may be re-designated "Deputy Town Clerk."

Candidates need not be solicitors but must have considerable experience in the practice of local government law and administration.

The appointment will be subject to the National Scheme of Conditions of Service and will be superannuable.

Applications, stating age, experience and qualifications, and accompanied by copies of three recent testimonials, must reach the undersigned not later than January 13, 1951.

A. V. RATCLIFF,
Town Clerk.

Municipal Buildings,
Bridge Street,
Godalming.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837]

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NOTES of the WEEK

Parental Contributions and Parental Duty

We have on a former occasion called attention to the fact that the contributions ordered by magistrates to be paid by parents in respect of the maintenance of their children under such orders as approved school or fit person orders are said to be often much too small. We attach considerable importance to this matter. So much is done for parents and children nowadays that an appreciable number of parents seem to think that the Government, or the local authority or indeed anyone else who can be induced to pay, should be responsible for the expense of educating and, to some extent, of maintaining their children.

In this connexion, we are glad to quote a passage from Home Office Circular No. 220/1950 on the subject of parental contributions:

"On the general question of the liability of parents to contribute towards the maintenance of their children received into care under s. 1 of the Children Act, the Secretary of State assumes that local authorities, when considering the amount of the contribution to be made by agreement without a court order, look to parents to pay according to their means. It is right in principle that parents should contribute according to their means, and to require them to do so may serve to avoid the needless reception into care of children (particularly short-stay children) for whom other suitable arrangements could be made by the parents, or the retention of children in care for needlessly long periods."

The circular adds that although it seems that local authorities are not in a position to spend money to pay the fares of relatives or of the children concerned, the National Assistance Board might be prepared to do so in exceptional circumstances, where a temporary arrangement could be made with relatives, but could not be made, because of lack of means, without such assistance.

The maintenance of family relationships and the proper recognition of family ties and duties are matters of so much importance that it is to be hoped everything possible will be done to further suitable voluntary arrangements as an alternative to placing children in care of a local authority unnecessarily.

Trial and Sentence

In one sense, there is a definite distinction between trial and sentence. For instance, a person who is committed to quarter sessions for sentence, under s. 29 of the Criminal Justice Act, 1948, has already been tried and found guilty by the magistrates' court, and all that remains for quarter sessions is the question of sentence. On the other hand, it would not be unreasonable to speak of the trial of a person as including everything that takes place up to and including sentence.

In *R. v. Grant* (*The Times*, December 6), the Court of Criminal Appeal considered the meaning of the word trial in s. 23 of the Criminal Justice Act, 1948. The appellant had been convicted summarily and committed for sentence under s. 29 and was sentenced by quarter sessions to corrective training. The notice required by s. 23 was served on the day of his committal, that being nearly four weeks before the day on which he was sentenced, and the ground of his appeal was that notice had not been served upon him at least three days before his appearance at the magistrates' court. The argument for the appellant was that s. 23 required notice of intention to prove convictions to be served at least three days before the actual trial as distinct from appearance for sentence.

The Lord Chief Justice, giving the judgment of the Court, said that s. 29 of the Act of 1948 clearly meant that, once a man was sent to quarter sessions for sentence, he was to be treated in all respects as if he were being sent there for trial. It was, therefore, open to the police to serve a notice of previous convictions on a prisoner before he was brought before quarter sessions, and, if they had done that, quarter sessions could then pass any sentence for which such notice was requisite. The Court could not hold that the trial before the justices was a complete one, and in the circumstances quarter sessions had power to pass the sentence.

The sentence of corrective training would be set aside and the appellant would receive a sentence of two years' imprisonment.

It would be difficult to make s. 23 work satisfactorily if it were necessary to serve notice before the defendant's trial in the magistrates' court, when at that stage the police could not know whether the case would be concluded there or whether the magistrates would consider it a case to be sent to quarter sessions for sentence to be passed there.

The Size of the Bench

As had been fore-shadowed, the rules regulating the number of justices sitting together at quarter sessions and at a magistrates' court provide for a maximum of nine at the former and of seven at the latter. Many people considered that a maximum of five magistrates was preferable at petty sessions and that the ideal number might be three. Against this, however, it must always be remembered that if only three constitute a court the opportunities of gaining experience on the bench are almost certain to be insufficient, and it may be so even if the number is five. On the whole the choice of seven as a maximum is no doubt wise, and there is nothing to prevent the holding of

courts consisting of a smaller number if local conditions show that this will work satisfactorily.

Provision is also made for the annual election of chairman and deputy chairman by secret ballot and without previous nominations. In the event of a tie the decision is to be by lot, and it is the clerk who must draw lots.

The rules which are entitled the Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950 (S.I. 1908) are dated November 29, and will come into force on January 1, 1951.

There is a misprint in r. 4 (4) which refers to para. (2) of r. 2 as not applying to juvenile courts and courts for domestic proceedings. The reference should be to r. 1 (2). A correction of the misprint has since been issued.

Warrington Juvenile Court

In his report for the year ended October 31, the chairman of the Warrington juvenile court panel refers to " the unhealthy growth in the number of juveniles brought before the court." In 1948 there were 152, in 1949 there were 193 and in 1950 up to October 31, 235, and it is expected that for the whole of 1950 the number of cases will be in the region of 350. It is, however, necessary to bear in mind that an increase in the number of cases brought before the court does not always prove a corresponding increase in the number of offences committed. The attitude of the police, their readiness to bring cases to court and the fact that they do or do not receive encouragement from the bench, may have a striking effect upon the volume of work in a juvenile court.

The Warrington report shows that the commonest indictable offence is stealing in some form or other and this is often far beyond petty pilfering. Unfortunately, the magistrates often felt that there was a lack of parental interest in the activities of children and sometimes even guilty knowledge on the part of the parent. Wilful damage is also a serious feature, and it is urged that both adults and children need to learn to treat other people's property with more respect.

The report assigns considerable blame to parents for leaving too much of what should be their duty to be done by others. It is evidently not enough that a parent should know that a boy has gone to some youth organization " even club membership often becomes a profitless gratification of the herd instinct and too frequently an excuse for roaming the streets and keeping late hours." However, there is some re-assurance in the acknowledgment that parents often accept advice and profit by it when they realize where they have fallen short of their duty. Resentful parents, it is said, are becoming fewer, and this is perhaps the most hopeful feature of the work done by the court.

The report discounts the idea that backwardness is a strong predisposing cause of delinquency, basing its opinion upon intelligence quotients. Unsatisfactory home conditions, especially as to the parents and their relationship to one another, are considered to be more serious. It is not a question of slum conditions in Warrington, but rather of problem families.

Acquisition of Land : Solicitors' Costs

A troublesome little point which crops up from time to time is the mode of calculating the costs of the vendor's solicitor upon acquisition of land by a local authority, where s. 82 of the Lands Clauses Consolidation Act, 1845, applies. We dealt with the point at 110 J.P.N. 571 ; 113 J.P.N. 653, citing *Re Burdekin* (1895) L.T. 729, *Re Stewart* (1889) 60 L.T. 737, and other cases ; and most recently at 114 J.P.N. 146. The Minister of Health, who before 1946 was not in general acquisitive of land, and so had not, so far as we know, had occasion to make any pronouncement on the point, has now found himself obliged to do so, by reason of s. 58 of the National Health Service Act, 1946, and his advisers have adopted the view we had already expressed. The note issued from the Ministry to regional hospital boards and other bodies in the national health service may be helpful to local authorities also : it is dated November 30, 1950, and bears the reference R.H.B. (50) 111—it cancels an earlier note with reference R.H.B. (49) 118.

The new note takes the view that, in respect of the vendor's solicitor's costs of deducing title and perusing and completing the conveyance, the Minister is liable to pay itemized charges calculated in accordance with sch. 2 to the General Order made under the Solicitors' Remuneration Act, 1881, and not costs in accordance with the scale prescribed by sch. 1. Accordingly contracts signed on behalf of the Minister should provide, in respect of the payment of the vendor's solicitor's costs, for the payment of itemized charges. The preparation and presentation of a fully itemized bill need not however be insisted on, if it is thought that the amount which is being asked approximates to what would be the total of an itemized bill. In addition the Minister will be prepared to pay a sum of £2 2*s*. 0*d*. in respect of work preliminary to deducing title, undertaken by the vendor's solicitors—this is another matter on which we have expressed an opinion to the same general effect. When, however, registered land is being purchased, the scale of remuneration set out in the schedule to the Solicitors Remuneration (Registered Land) Order, 1925, will apply, unless the vendor's solicitors elect to be paid itemized remuneration in accordance with para. (*m*) of art. I of that order. The note to regional hospital boards deals also with two other matters, namely, stamp duty and registration fees on transfer of property to the Minister, but these do not appear to be relevant where land is acquired by local authorities.

Housing Management Economy

Organization and methods being followed now by housing authorities for disseminating information to their tenants and obtaining information from them with regard to the care and condition of fittings and equipment in numerous housing estates will have a marked effect later on housing revenue accounts. At present, there are many new houses and much new equipment in which current neglect or misuse may not be immediately evident but which will entail earlier and heavier expenditure on reinstatement and repair than would have been necessary if management had looked further ahead. Possibly, the financial aspect of quality in management could have been demonstrated by statistics in the recent report of a sub-committee of the Central Housing Advisory Committee, partly to support a recommendation of considerably enlarged functions of rent collectors. Nevertheless, the report is so full of useful information and practical advice that housing authorities seem bound to give careful consideration to the desirability of adapting their administration to conform with recommendations of the sub-committee wherever there are differences.

In terms of space, the major part of the report consists of discussion and formulation of advice for local authorities to transmit to their tenants on how various pieces of equipment should be treated and looked after. All this is important, yet the ways in which housing authorities might pass advice on to their tenants, dealt with in the comparatively short Part 2 of the report, is equally important. Clearly, the best advice of any sort is pointless unless it reaches and moves the people who can apply it. For this reason, the sub-committee quickly reached the conclusion, reinforced on hearing the representatives of the Society of Housing Managers and of housing managers,

that while cards, booklets and demonstrations to groups of tenants all have their value in helping tenants to look after and get the best results from the equipment in their houses, the most valuable and effective way of assisting them is to visit them in their own homes.

Contact maintained through the periodical visit of the rent collector is regarded by the recent sub-committee as the most convenient and satisfactory one, and they were in "wholehearted agreement" with the first report of the housing management sub-committee which recommended door-to-door collection of rents partly for this purpose. Four pre-conditions and consequences were mentioned by the recent sub-committee as being involved in acceptance of their recommendation that "all local authorities who do not already adopt the practice should make their rent collectors responsible for watching the general condition of groups of houses and for advising tenants in them." Among these, avowed recognition of responsible work as a rent collector as a step towards ultimate status as a trained housing manager would have to be made clear if the work is to attract keen and interested applicants, and collectors would have to be given the opportunity of learning about elementary construction and equipment as well as such other subjects as are required of housing managers.

Realization that many authorities would see in a recommendation that rent collecting should be made a more responsible job only a suggestion that they should employ more collectors at higher salaries led the sub-committee to urge that "very solid advantages and economies are to be set against such outlay," of which economy in future maintenance expenses was one, and interchange of ways in which tenants have solved difficulties in managing their equipment was another. Instruction cards, handbooks, demonstrations, notification of defects, charges to tenants for repair work, card index records, and machinery for carrying out repairs are also discussed in the sub-committee's report with perspicuity, clarity and commonsense. The fact that a digest of evidence received from local authorities on certain matters, set out in appendix seven of the report, contains a statement in relation to education of tenants that "replies received offered little scope for generalization," suggests ample scope for closer approach to a more uniformly high standard of housing administration in which the benefit of experiments and experience of progressive authorities could be utilized for the benefit of all. Much care and hard work have resulted in a report containing admirable advice which would be expensive to ignore.

THE MAINTENANCE ORDERS ACT

This Act comes into force on January 1 (*see* s. 32 (2)) and makes important changes in the law dealing with orders under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the Guardianship of Infants Acts, 1886 and 1925, the Bastardy Laws Amendment Act, 1872, the National Assistance Act, 1948, s. 44, the Children Act, 1948, s. 26, the Children and Young Persons Act, 1933, s. 87 and the National Assistance Act, 1948, s. 43. It deals with the position where, in proceedings under any of the above statutes, one of the parties is in England and the other in Scotland or Northern Ireland. There are corresponding provisions (with which we shall not deal fully), dealing with the law under similar statutes in Scotland and Northern Ireland, and affecting the jurisdiction of courts in those countries. There are also provisions for the enforcement of an order made in England, Scotland or Northern Ireland by registering such an order in the appropriate court in either of the two countries, other than the one to which it was made, in which the person liable to make payments is residing.

Additional jurisdiction to make orders is conferred on English courts by the first four sections. Section 1 deals with proceedings under the Summary Jurisdiction (Separation and Maintenance) Acts; s. 2 with the Guardianship of Infants Acts; s. 3 with affiliation proceedings and s. 4 with proceedings for contribution orders under the Children and Young Persons Act, 1933 (including those arising from the Children Act, 1948) and for orders to recover amounts paid to dependants under the National Assistance Act, 1948. We propose to deal with each of these sections in turn and to mention, in passing, the corresponding provisions affecting courts in Scotland and in Northern Ireland.

Where the wife resides in England and the parties last ordinarily resided together as man and wife in England, the appropriate English court (which means a court where the cause of complaint wholly or partly arose, or where the wife is living when she makes her application), may make an order under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, against her husband residing in Scotland or Northern Ireland. The order may include an order giving custody of any children of the marriage (this includes legitimated children and children jointly adopted) to the wife and maintenance up to £5 per week for the wife and up to 30*s.* per week for each child whose custody is so given to the wife. But the court must *not* make a separation order (s. 1 (1)).

The sections conferring a corresponding jurisdiction on Scottish and on Northern Ireland courts are ss. 6 and 10 (1) respectively.

Section 1 (2), which cannot be summarized accurately in fewer words, is as follows:

"It is hereby declared that a court in England has jurisdiction

"(*a*) in proceedings under the said s. 4 by a woman residing in Scotland or Northern Ireland against a man residing in England;

"(*b*) in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, revival or variation of any order made under that section."

By s. 1 (3), if an order is revoked under s. 1 (2) on the ground of a wife's adultery the court may make a fresh order, under the proviso to s. 7 of the 1895 Act which was added by s. 2 (1) of 1925 Act, giving custody of the children to the wife.

A reasonable interpretation of s. 1 (2) (*a*) would be that it is intended to deal with the case of the couple who were living together in England and in whose case, after they parted, the husband continued to reside in England while the wife went to Scotland or Northern Ireland. Particularly so far as Scottish cases are concerned it would seem to be likely to lead to difficulties to give the subsection the wider interpretation to which it appears to be open of enabling English courts to adjudicate where the matrimonial home was not in England and the man has come there after the break-up. In such a case it would seem to be a question of Scottish or Northern Ireland law whether there had been a matrimonial offence. There would, of course, be an obvious exception to this if the husband, in England, were

to commit adultery, thus giving his wife a cause of action arising in this country. Against the wider interpretation it may also be urged that in the kind of case above referred to, where the matrimonial home was in Scotland or Northern Ireland, the Scottish or Northern Ireland courts have jurisdiction by virtue of ss. 6 and 10 respectively and there is no need to invoke the jurisdiction of an English court. But it is impossible to say that the subsection is not open to this wider interpretation.

Section 2 (1) gives a similar jurisdiction under the Guardianship of Infants Acts, 1886 and 1925, for an English court to give the custody of an infant to its mother (with or without maintenance from the father), when she and the infant are residing in England and the father resides in Scotland or Northern Ireland. The court so to act is that having jurisdiction in the place in which the mother resides.

Section 2 (2) contains a declaratory provision similar to that in s. 1 (2) stating (*a*) that a person residing in Scotland or Northern Ireland may apply to an English court (on the authority of *R.* v. *Sandbach Justices ex parte Smith* [1950] 2 All E.R. 781, it will be the court having jurisdiction where the respondent resides) for an order relating to the custody of an infant. If the mother is the applicant the father may be required to make payments to her towards the infant's maintenance; and (*b*) that an English court has jurisdiction in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, revival or variation of an order relating to the custody of an infant, with or without an order as to maintenance.

When an application is made to an English court under s. 5 of the Guardianship of Infants Act, 1886, or under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, relating to the custody of an infant, and the applicant is a woman residing in Scotland or Northern Ireland the court may make an order under the said s. 5 upon the application of the defendant in the proceedings (1950 Act, s. 2 (3)). It is, perhaps, a little curious to speak of an application under s. 4 of the 1895 Act as "relating to the custody of an infant" but we assume that s. 2 (3) is to be effective in any application under the said s. 4 in which the the custody of a child is in issue.

Section 3 has four subsections. The first gives jurisdiction to English courts to make an order of affiliation against a man residing in Scotland or Northern Ireland in proceedings under the Bastardy Laws Amendment Act, 1872, the National Assistance Act, 1948, s. 44, or the Children Act, 1948, s. 26, provided that the act of intercourse which did result, or any act of intercourse which might have resulted, in the birth of the child took place in England. The basis of the jurisdiction seems to be somewhat arbitrary. It does not cover, for instance, the case of a couple who are courting in England and who have intercourse whilst on a holiday in Jersey, but not elsewhere. It would seem that the girl would be in a better position under this section if she allowed or encouraged intercourse to continue after their return to England from their holiday.

Subsection 2 gives jurisdiction under the Bastardy Laws Amendment Act, 1872, to the English court where the alleged putative father resides on the application of a woman residing in Scotland or Northern Ireland.

Subsection 3 enacts that an English court which has made an affiliation order under any of the three statutes mentioned in subs. 1 may hear an application to revoke, revive or vary that order brought by or against a person residing in Scotland or Northern Ireland.

Subsection 4 helps a woman who, because of the departure from England of the putative father, has been unable previously to obtain an affiliation order against him under the 1872 Act. If the child was born before January 1, 1951, and the alleged father left England before the end of one year from the date of its birth the mother, notwithstanding the time limit in s. 3 of the 1872 Act, may take advantage of the jurisdiction conferred on English courts by subs. 1, *supra*, by applying at any time during the year 1951, provided that she could have made an application under the 1872 Act if the father had come to live in England immediately before the application, in other words, that he had not previously returned to England so as to give the woman the opportunity of applying on an earlier occasion.

Section 4 gives to an English court jurisdiction in respect of a person residing in Scotland or Northern Ireland to make a contribution order under the Children and Young Persons Act, 1933, s. 87, upon the parents of a child or young person in whose case a fit person order or an approved school order has been made or who has been received into the care of a local authority under the Children Act, 1948, and also to make an order under the National Assistance Act, 1948, s. 43, in respect of assistance given under that Act. Applications to revoke, revive or vary any such order may be made to an English court by or against a person residing in Scotland or Northern Ireland.

By s. 5 rules made by the Lord Chancellor under the Justices of the Peace Act, 1949, s. 15 (for the time being the power is to be exercised under the Summary Jurisdiction Act, 1879, s. 29), may provide that if a woman begins proceedings by virtue of s. 1 (1) in a court other than one having jurisdiction where the parties last ordinarily resided as man and wife the defendant may apply to have them removed to a court having such jurisdiction.

For Scottish courts ss. 7, 8 and 9 correspond to ss. 2, 3 and 4, and for Northern Ireland courts there are ss. 11 and 12 corresponding to ss. 3 and 4, with no section which obviously corresponds with s. 2. We are not concerned to pursue this point as it does not seem to affect the jurisdiction of English justices.

The service in one part of the United Kingdom of process issued under the Act in another part is dealt with in s. 15. The process is to be endorsed in the part where it is to be served by a justice of the peace if in England, by a sheriff in Scotland and by a resident magistrate in Northern Ireland and a form of endorsement is set out in form 1 in sch. 2. When process is served under the section proof of service may be by declaration made, in a form like form 2 in sch. 2, before one of the authorities having power to endorse such process, but the service of any such summons or writ *must be personal*. Section 4 of the Summary Jurisdiction (Process) Act, 1881 (which deals with the service of English process in Scotland and *vice versa*), is not to apply to process served under s. 15, and a warrant is not to be issued for the arrest of a person in one part of the United Kingdom who has failed to appear in answer to any such process issued in another part of the Kingdom.

Part II of the Act (ss. 16 to 25 inclusive) deals with the enforcement in one part of the United Kingdom of orders made in another part. It is not confined to orders made in magistrates' courts, but deals, in addition to orders made under the various statutes referred to earlier in this article, with orders for alimony, maintenance or other payments made (so far as English courts are concerned) under ss. 19 to 27 inclusive of the Matrimonial Causes Act, 1950. We do not propose to consider further the method of dealing with orders made by superior courts.

Summary courts in England will receive applications that orders made by them shall be registered in a court in Scotland or Northern Ireland, and will receive also from courts in those countries orders made there which are to be enforced in England

against the person liable to make payments who is for the time being resident in their area (s. 17).

An application that an order may be registered in a Scottish or Northern Ireland court may be made to a justice or justices acting for the same place as the court which made the order, the ground being that the person liable to pay under the order is living in Scotland or Northern Ireland. A certified copy of the order is to be sent to the appropriate court of summary jurisdiction in Northern Ireland or sheriff court in Scotland. On receipt, the order is to be duly registered by the court to whom it is sent, and notice of such registration is to be sent to the court which made the order.

If an order is payable through a collecting officer or other officer of a court that officer is, on request of the party concerned, to make application for the registration of the order as above subject to the payment by the party of any costs properly incurred. An order may not be registered in more than one court at the same time.

Registered orders are to be enforced by the court in which they are registered as if they had been made by that court (s. 18).

In England, except for orders made in Scotland under s. 43 National Assistance Act, 1948, or in Northern Ireland under s. 20 of the National Assistance Act (N.I.), 1948, or s. 11 of the Welfare Services Act (N.I.), 1949, all maintenance orders registered in pursuance of the Act shall be enforceable in all respects as if they were affiliation orders made by the enforcing court. The excepted orders are to be enforced as if made by the enforcing court under s. 43 National Assistance Act, 1948, *i.e.*, summarily as a civil debt with a time limit of three years within which application may be made after the sum became due.

While an order is registered under these provisions no proceedings may be taken to enforce it except as hereinbefore provided, *i.e.*, by the court with which it is registered.

When an English order is registered under this Act in another court a provision that the payments are to be made through some other person on behalf of the payee is for the time being of no effect. Correspondingly, when an order made elsewhere is registered with an English court, that court shall, unless satisfied it is undesirable to do so, order payments thereunder to be made through its own collecting officer or the collecting officer of some other English court. Normally it would be the collecting officer of the enforcing court. Such an order for payment through a collecting officer may be varied or revoked by a subsequent order. Notice of such orders must be given to the person liable to pay and until he is given such notice he may lawfully continue to pay under the last order of which he has had due notice (s. 19).

To deal with arrears due at the time of application for registration s. 20 provides for the applicant to lodge with his application a certificate of arrears given by any court officer through whom payments should be made or otherwise a statutory declaration or affidavit as to the amount of arrears. This certificate, declaration or affidavit is to be sent with the copy order to the court with which the order is to be registered, and is to be evidence in any enforcement proceedings.

So far as this matter of registration is concerned it appears from s. 17 (3) (*b*) that the justice or court to whom the application is made is to send the certified copy of the order (plus any certificate, etc., of arrears) to the "court of summary jurisdiction acting for the place in England or Northern Ireland in which the defendant appear to be, or, as the case may be, the sheriff court in Scotland within the jurisdiction of which he appears to be." The decision has to be made by the "sending" court and we do not know how they are accurately to ascertain which is the correct court. It will obviously be inconvenient if such copy orders are sent to the wrong court, because s. 17 (4) says that on receipt the prescribed officer of the "receiving" court "shall cause the order to be registered in that court" and gives him no option of objecting that his is not the correct court.

Section 22 deals with the discharge and variation of registered orders. The court with which the order is registered, and that court alone, may vary the *rate* of payments under the order on the application of either party, but the variation must be within any maximum rate of that part of the Kingdom in which the order was made. For this purpose a court in one part of the United Kingdom may take notice of the law in force in any other part. Section 15 is to apply to the service of process for the purposes of s. 22. Variations, other than in the rate of payments, may be made by the court which made the order and that court retains also its powers to discharge the order. We take it that the effect of this is that if the original court discharges, for example, a provision giving custody of a child to a wife it could at the same time "discharge" the order as to payments in respect of that child as this would not be a variation in the *rate* of payments, but rather a cancellation of a particular payment.

To enable a party to offer relevant evidence to the court hearing an application to vary or discharge an order which is registered under the Act evidence may be taken, in either the court which made the order or in that in which it is registered, and may be transmitted to the court in which the proceedings to vary or discharge are being heard. The procedure is similar to that under the Maintenance Orders (Facilities for Enforcement) Act, 1920.

By s. 23 if an alteration, to use a general word, is made on a registered order by the court of registration or by the original court that court is to notify the other court of the alteration.

Section 24 provides for the cancellation of registration by the court of registration on the application of the "payee," unless proceedings are pending at the time for variation of the order in that court. If the payer ceases to reside in the part of the Kingdom where the order is registered he may apply to the court which made the order, or other appropriate authority as defined in s. 17, and the court or person to whom such application is made shall, if duly satisfied, notify the court of registration and the order shall cease then to be registered in that court.

Any cancellation of registration (other than by the court making the order) shall be notified to the court which made the order. With the cancellation of registration any order made under s. 19 (2) for payment through an officer of the court of registration or other court ceases to have effect, subject to due notice of the cancellation being given to the payer. Application for the cancellation of registration must be made by any collecting officer appointed under s. 19 (2) if the payee so requests.

Rules regulating the practice of summary courts under Part II may be made by the Lord Chancellor (s. 25).

Part III (ss. 26 to 32) contains general provisions. By s. 26 declarations under s. 15 and certain other documents for the purposes of the Act or rules made thereunder are to be accepted as what they purport to be unless the contrary is shown; and para. 7, sch. 2, Emergency Laws (Miscellaneous Provisions) Act, 1947, is to apply to proof of orders, variations, etc., for the purposes of the Act, with certain enlargements of the documents and entries to which it is to apply.

Section 27 (1) makes it clear that the powers given by the Act are not to deprive courts of jurisdiction they otherwise possess, but are intended to confer additional jurisdiction as stated. Section 27 (2) is not clear beyond doubt. It enacts that any jurisdiction conferred by Part I or any enactment therein referred

to, upon a court in one part of the Kingdom may be exercised notwithstanding that any party to the proceedings is not domiciled in that part of the United Kingdom, in other words residence and not domicile is the test. The subsection continues: "and any jurisdiction so conferred in affiliation proceedings shall be exercisable notwithstanding that the child to whom the proceedings relate was not born in that part of the United Kingdom." It has been suggested that the effect of this is to override the case of *Tetau* v. *O'Dea* [1950] 2 All E.R. 695, but we do not think that this is its effect. This is an Act dealing with England, Scotland and Northern Ireland, and facilitating the making and enforcement of orders as between those three countries. We think that s. 27 (2) must be read and interpreted with this in mind, and that it affects only those cases in which a child has been born in the United Kingdom, although not necessarily in that part of it in which the application is being made. Had the wider meaning been intended it would have been simple to substitute for "was not born in that part of the United Kingdom" the words "was born abroad." There could have been no doubt, then, as to what was intended.

It is to be noted that s. 6 of the Summary Jurisdiction (Process) Act, 1881, is repealed. The first schedule to the new Act contains a list of provisions in the Children and Young Persons Act, 1933, and in the Children Act, 1948, which are modified to fit in with the provisions of the new Act.

We do not pretend to have dealt in detail with all the provisions which affect summary courts. In any event reference to the statute itself is essential to ensure strict compliance with its requirements.

Just as this article is ready to go to press we have received a copy of the Maintenance Orders Act, 1950, (Summary Jurisdiction) Rules, 1950, and we shall have to deal with these in a subsequent article.

PLANNING AND ADVERTISING

At 114 J.P.N. 308 we spoke of a case at Cheltenham, the first to come to our notice, where restrictions on advertising had been settled by agreement between the planning authority and the appropriate commercial organization. At p. 374 a correspondent informed us that Winchester had been ahead of Cheltenham. There are other obvious examples of the special area in which general opinion would favour strict control; Chester, which we believe obtained local Act powers long before anybody else; Shrewsbury, and Bath, will come at once to mind, though selection is invidious. In our article at p. 308 we also said that the advertisement hoarding is necessary to a modern commercial community, and gives a good deal of pleasure to the normally constituted man. Here is the first pointer towards danger. Upon the principle that a jury is the guardian of liberty, etc. (a principle which the Englishman asserts in theory, and disregards in practice, by arrangements under which only a very small fraction of trials, civil or criminal, come before a jury), an elected local authority ought to be the right sort of body for balancing the claims of "amenity" or "refinement" against those of popular satisfaction—in so far as a balance needs to be kept. But, in the spirit of the licensing justices who wished to prohibit darts in public houses because it was a "pothouse game," there are local authorities so anxious to uplift the masses, or so susceptible to what the Lord President calls "pressure groups," that they lose sight of what the masses want. The late John Gibbons somewhere wrote that the ordinary man would like the Albert Memorial if he was allowed to do so but, having for generations been drilled by persons of refinement to believe it horrible, is now unable to look at it with unjaundiced eyes. Poster advertising, like the Albert Memorial, has been given a bad name, so that, given new statutory powers, the ordinary councillor (who in private life would not be seen dead with Rima, the Memorial's neighbour; shares Sir Alfred Munnings's preference for Reynolds as against Picasso, and even enjoys discovering the latest Guinness placard), is in his public capacity not over difficult to persuade into a belief that statuary in public parks should be supplied with knobs instead of heads, resembling what never was on sea or land; that people ought to be drilled into disliking pictures they can understand—and therefore that pictorial advertisements had better not be allowed where they can be seen.

It is therefore the more satisfactory that discussion took place in November, between the Minister of Town and Country Planning personally and a deputation from the Outdoor Advertising Industry Advisory Committee, in which the Minister expressed approbation of the negotiations which the Advisory Committee were conducting in regard to orders for areas of special control, which had resulted in such a large measure of agreement. He hoped this procedure would be adopted in future cases, and particularly welcomed the meetings which the Committee had arranged with the various town planning institutes.

Throughout the meeting the Minister stressed the importance of co-operation between local authorities and the industry, which he felt would be a practical solution of all the difficulties arising, and he expressed gratification that so much had been done by the industry towards this end. In his summing up at the end of the meeting, the Minister considered it was very desirable that planning authorities and the industry should understand one another's views, and he promised to consider what action the Ministry could take to encourage an extension of the practice of co-operation, such as existed today in regard to areas of special control. He thought he might be able to make some communication to local authorities, advocating consultation as a general policy.

Since Parliament began to concern itself with outdoor amenities in the Advertisement Regulation Act, 1907, and subsequent general Acts, and in local Acts (the Chester Act mentioned above was a good deal earlier), it has tried giving the person adversely affected by amenity controls a right of recourse to the ordinary courts; it has tried establishing special appellate bodies, and tried empowering a Minister to hear appeals. It has now settled the problem, at least for the present, by establishing an appeal to the Minister of Town and Country Planning. That there must, for reasons appearing from what we have already said, be an appeal in some form to somebody will be agreed by everybody, except perhaps the centrifugal fanatics. That the appeal should go to a Minister is not so obvious; that it should go to a Minister departmentally responsible for encouraging "amenity" is again less obvious, except to the amenity fanatics. But there it is at present, so that it should be helpful to the local authorities concerned as well as to the industry, of good working relations are established between the latter and the Minister.

One of the points raised with the latter by the recent deputation was, we are told, the length of time concerned in getting the industry's appeals heard and decided. Delay is a matter of moment to commercial interests, which have to accumulate material, plan selling campaigns, and deploy their staffs—of graver moment than is always understood in local government circles with their *tempo* conditioned by the committee system, or in Whitehall, and it seems impossible to justify keeping an

advertiser waiting several months, first by delay in the hearing and then in announcing the result of his appeal.

As well as this procedural matter, the deputation, we are told, put before the Minister their views on some matters of substance. One of these is the display of advertisements on gable ends of buildings and on flank walls of buildings. This (they said) had been stated by spokesmen of the Association of Municipal Corporations to be a "particularly offensive form of advertising, which could rarely be allowed without injury to amenity"—a statement which may cause the man in the street to catch his breath, when he remembers the blank ugly walls, the crumbling gables where a party wall has been exposed to weather on the demolition of the neighbouring house, and the other eyesores along his daily journey to work, which have been hidden by kindly reminders of things to eat and drink and wear. The deputation did not go into this ground for questioning the general statement, but on behalf of the industry took a commercial line, submitting that the Association was not entitled to have hard and fast rules laid down, to be operated irrespective of the merits of individual cases. They estimate that gable end and flank wall advertising comprises at least forty *per cent.* of the whole poster space of the country. Generally speaking, the majority of advertisements on walls are in the shopping areas, mainly because in such areas spaces for other structures suitable for advertising are few and far between. The busier the area, the smaller the chance of land being available for the erection of advertisements. Such land is more remunerative as shop frontages. Elimination of wall advertising must thus result in the virtual disappearance of outdoor advertising in the busiest areas; a survey recently made on a mile and a half of one of the busiest London shopping streets showed twenty-five advertisements on walls and only three erected on vacant land. Moreover, many advertisements are fixed to the walls of shops, advertising articles sold in the shop. Such advertisements could not be placed in more appropriate positions, and the vast majority can only be fixed to a wall. It cannot (say the industry) be argued that the mere fact that an advertisement is fixed to a wall must be in itself an injury to amenity. The material factor is not the composition of the structure upon which the advertisement is placed, but its location and siting, and the industry regards it as outside the realm of practical planning, for local authorities to contemplate removal of advertisements from gable ends and flank walls to other sites on which hoardings could be erected.

Another point of substance taken by the deputation was the procedure by "challenge" introduced by the Act of 1947, in conjunction with the expiry on July 31, 1951, of the period of grace allowed by the Act for existing advertisements: *see* reg. 8 (2) of the Town and Country Planning (Control of Advertisements) Regulations, 1948: S.R. & O. 1948, No. 1613. Some experience has been gained in dealing with challenges, since August, 1949, and the industry alleges that some planning authorities intend to challenge all advertisements merely for the sake of putting on record their existence. This has been known to be done without prior inspection of the advertisements involved. If challenges are served in quantity, dealing with them will impose an impossible burden on many operators, while the power contained in reg. 8 (2) to serve a challenge notice on any one of a number of people interested in advertisements on particular premises in the name of the whole, is likely to cause difficulty. The experience of the industry over many years has been that it is in practice impossible to secure that landlords, who are often inexperienced in such matters, pass on notices promptly. There is also said to be a tendency among some authorities to make an approach to landlords in respect of existing advertisements, or in connexion with applications, exhorting them to withdraw their agreements for the right to display the advertisements on their premises, or to have the advertisements removed. By this method, at the present time, some authorities are said to be trying to override the provisions of the regulations, and to attempt to impose a control which was never envisaged, even in respect of sites where the authority could not properly refuse an application for consent. This is said to have led to breaches of contract.

We have dealt with these particular issues at some length, because they illustrate the sort of apprehensions felt within the industry. That industry is an essential channel of communication to the public, used continuously for commercial and government purposes. At the present time it is being, or has just been, used for recruiting for the three fighting services, for the National Savings Movement, road safety campaigns, campaigns by the Ministry of Health, and civil defence, while its use for other purposes of government policy, is in contemplation. The committee which arranged the recent deputation to the Minister of Town and Country Planning represents each trade association, incorporating every section of the outdoor advertising industry—the sign, electric sign, poster, and "solus" advertising contractors, the British Transport Commission's commercial advertisement division, and the direct advertisers, and it also has the full support of the Advertising Association. By all means let the standard conditions laid down in 1948 be enforced, for the removal of worn out, dirty, and untidy posters, in regard to which local authorities have often been offenders, by leaving old local government notices to crumble from the boards long after the occasion to which they referred had passed away, but it is not in the interest of local government itself, unnecessarily *disputare de gustibus* with responsible, even though commercial, organizations. Nor is it in the interest of local government, or fair to the ordinary member of the public who derives innocent pleasure from looking at posters as he goes about, to deprive him of that pleasure because councillors think beer, or whatever else is advertised, is bad for him, or because superior persons think the posters vulgar or condemn them as Victorian.

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Parker, JJ.)

R. *v.* CITY OF LONDON, ETC., RENT TRIBUNAL, *Ex parte* HONIG

December 8, 1950

Rent Control—Jurisdiction of tribunal—Inquiry into collateral fact—Whether tenancy lawfully determined—Furnished Houses (Rent Control) Act, 1946 (9 and 10 Geo. 6, c. 34), s. 2 (2).

APPLICATION for order of *certiorari*.

The applicant, Samuel Honig, let two rooms in a house in East India Dock Road to Albert Shomade ("the tenant") at a rent of £1 7*s.* a week. On April 18, 1950, the applicant served on the tenant, a notice to quit expiring on Monday, May 1, 1950, such notice being good on the face of it. On June 1, 1950, the tenant, under the Furnished Houses (Rent Control) Act, 1946, referred his contract of tenancy to the tribunal with a view to obtaining a reduction of rent. The applicant submitted that, as the contract was determined before the application to the tribunal was made, there was no contract in existence at the material date, so that the tribunal had no jurisdiction. The tenant contended that the notice given to him was bad since his tenancy was a Saturday to Saturday tenancy and not one from Monday to Monday, as alleged by the landlord. The tribunal, having heard statements from witnesses, held that the notice given by the landlord was a bad one, and, consequently, that there was an existing tenancy with regard to which they had jurisdiction. They reduced the rent to 17*s.* 6*d.* a week. The applicant applied for an order of

certiorari to quash the decision of the tribunal as having been made in excess of jurisdiction.

Held, that the tribunal had power to inquire into the collateral question whether the tenancy had been determined by a valid notice to quit at the time when the matter was referred to them, because a decision on that matter was necessary to enable them to decide whether they had jurisdiction to entertain the application before them; the tribunal's decision on the collateral question could be reviewed by the Divisional Court; but in the present case there was nothing before the court which satisfied them that the tribunal had come to a wrong conclusion; and, therefore, the application for *certiorari* must be refused.

Counsel: *S. W. Magnay* for the applicant; *J. P. Ashworth* for the tribunal.

Solicitors: *J. Dalton*; *Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* SIDMOUTH RENT TRIBUNAL; *Ex parte* SELLEK.
December 7, 1950.

Rent Control—Jurisdiction of tribunal—Converted house—Applicability of Rent Acts to flat—Rateable value—Appropriate date to be considered—Rent and Mortgage Interest Restrictions Act, 1939 (2 and 3 Geo. 6, c. 71), s. 7 (3)—Landlord and Tenant (Rent Control) Act, 1949 (12 and 13 Geo. 6, c. 40), s. 1 (1).

APPLICATION for order of *certiorari*.

The applicant, Mrs. Eleanor Annie Selleck, let a flat in Aldenham House, Sidmouth, to Brigadier Sidney Noel Rice for a term of three years from March 25, 1948, at a rent of £200 a year exclusive of rates. In 1947 Aldenham House, which had formerly been used as a boarding house, the rateable value then being £70 a year, was converted into four flats, including the one in question. On March 27, 1948, that flat was for the first time separately rated. It was rated at £80, but subsequently that assessment was reduced to £64. On November 18, 1949, on the application of the tenant, the Sidmouth Rent Tribunal, made an order varying the standard rent by reducing it to £100 a year. The applicant obtained leave to apply for an order of *certiorari* to quash the decision of the tribunal, as being in excess of jurisdiction.

Held, that, as the flat was not separately assessed until March 27, 1948, that was the appropriate day on which its rateable value had to be considered under s. 7 (3) of the Rent and Mortgage Interest Restrictions Act, 1939, and, as on that date it had been assessed at £80 a year, it was outside the jurisdiction of the tribunal, the fact that its rateable value had later been reduced being immaterial; nor could a contention, based on s. 7 (3) of the Act of 1939, that because the whole premises had been rated only at £70, the rateable value of a part, the flat, must necessarily be some figure less than that, be relied on by the respondent, because no apportionment had been made by a county court judge. The tribunal had, therefore, acted in excess of jurisdiction, and an order of *certiorari* would issue.

Counsel: *Norman King* for the applicant; *J. P. Ashworth* for the tribunal.

Solicitors: *Vizard Robinson & Co.*, for *Michelmore, Davies & Bellamy*, Sidmouth; *Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* BIRMINGHAM (WEST), ETC., RENT TRIBUNAL, *Ex parte* EDGBASTON INVESTMENT TRUST, LTD.
December 12, 1950.

Rent Control—Premium—Sum paid by prospective tenant to builder—Landlord and Tenant (Rent Control) Act, 1949 (12 and 13 Geo. 6, c. 40), s. 2 (5), s. 18 (2).

MOTION for order of *certiorari*.

In 1946 the applicants, Edgbaston Investment Trust, Ltd., had purchased six private dwelling-houses in Hagley Road, Birmingham, which had been damaged by enemy action during the war and become vacant. By an agreement, dated July 31, 1948, between the landlords and a company of building contractors and eighteen prospective tenants of the premises it was agreed that the builders should convert the premises into eighteen flats for the sum of £18,000, of which £9,000 was to be paid by the landlords and £500 each by the prospective tenants, and that leases for fourteen years of the flats should be granted to the tenants at rents between £100 and £150 a year. When most of the flats were complete three persons accepted tenancies of flats on the terms that they became parties to the aforementioned agreement and under it each of them paid a sum of £500 to the building contractors. These three tenants applied to the Birmingham (West) etc., Rent Tribunal for a reduction of their rents. The tribunal decided that the sums of £500 each paid by them to the building contractors were premiums, and adjusted the rents accordingly. The landlords obtained leave to apply for an order of *certiorari* to quash the decisions of the tribunal. Section 18 (2) of the Landlord and Tenant (Rent Control) Act, 1949, defines a "premium" as including "any fine or other like sum and any other pecuniary consideration in addition to rent."

Held, on construction, the definition of premium was intended to apply only to a pecuniary consideration paid to the landlord, and not to one paid to a third party, unless it were a payment to such third party on behalf of the landlord and so equivalent to a payment to the landlord. The tribunal, therefore, were wrong in regarding the payments by the tenants to the building contractors as premiums, and the order of *certiorari* must issue.

Counsel: *Dare* for the landlords; *R. J. Parker* for the tribunal.

Solicitors: *Church, Rendell* for *Westwood, Morris & Co.*, Birmingham; *Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 80.

WHEN IS A PERSON IN CHARGE OF A CAR?

A man appeared before the Mansfield borough magistrates last month charged, first, that on October 21, 1950, he was in charge of a motor car while under the influence of drink to such an extent as to be incapable of having proper control thereof, contrary to s. 15 of the Road Traffic Act, 1930, and, secondly, that at the same time and place otherwise than with lawful authority or reasonable cause he got on to that motor car and tampered with the brake, contrary to s. 29 of the Road Traffic Act, 1930.

The defendant, having consented to summary trial, pleaded not guilty to the first charge, but guilty to the second. Evidence was given that at 9.40 *p.m.*, police officers found the defendant seated in the driving seat of a car which did not belong to him in the local market square, which is level ground. He had one hand on the steering wheel, and the other was manipulating the hand brake lever, which was in the "off" position. He was totally unfit to drive a car by reason of having had too much to drink and kept muttering "Give us a shove." He was eventually certified by a doctor as unfit to drive. When cautioned and charged the defendant said: "I don't think you like me. Do you?" By reason of his condition the defendant was detained in a cell until 9 *a.m.* next morning, when he was again cautioned and charged with the major offence, and said: "I am a bloody fool. I don't remember a thing about it. Did I cause any trouble?" When charged with the second offence he replied "Thank God I didn't do any damage."

At the hearing, the defendant was represented by a solicitor who argued that the defendant was not in charge of the vehicle although he was hopelessly drunk. The defendant's solicitor drew the attention of the Bench to the fact that when the defendant visited licensed houses he was in the habit of ordering a taxi. Though the defendant could not recollect ordering a taxi on this occasion, it was suggested that he may have thought subconsciously that he was getting into a taxi. It was clear from the evidence that the defendant had no ignition key in his possession nor was there one in the car, and in those circumstances the defendant could not have started it.

The police argued that the defendant had placed himself in charge of the car. It was merely fortuitous that he had no ignition key with which to start it, and lucky that the car was on level ground. They argued that if the car had been on a slope it would have moved down the slope when the brake was released. The defendant would then have placed himself in charge of the car; he ought to be treated in the same way even though the car did not move.

The justices came to the conclusion that the defendant could not be said to be in charge of the car, and the first charge was dismissed. On the second charge he was fined £5 and costs.

COMMENT

Mr. Edward Hooton, M.A., LL.B., Clerk to the Justices, Mansfield, to whom the writer is greatly indebted for this report, states that the attention of the justices was drawn to a number of cases dealing with this subject which have been reported in this journal in past years.

The first of such cases was that which was reported at 97 J.P.N. 762. In that case, which came before the Bournemouth justices, a young man was charged with being under the influence of drink to such an extent as not to be capable of proper control of a

motor vehicle of which he was in charge. It was admitted on his behalf that he was intoxicated, but it was submitted as a defence that the vehicle could not be driven by him because the self starter was out of order, and a friend had hidden the starting handle. The Bench imposed a fine and suspended the defendant's licence.

The next case quoted was that which appeared at 99 J.P.N. 663. In that case, which was heard before Lord Ilkeston, the stipendiary magistrate sitting at Birmingham, the defendant was found sitting in a motor car incapably drunk at 12.30 *a.m.* He was switching the lights on and off and on being asked whether there was anything wrong with the lights he replied "I do not know: I'm drunk." It was proved that a friend who had driven the car with the defendant inside to the place where it was found, had left it while he escorted another friend home. The defendant was in fact not able to drive a car and Lord Ilkeston dismissed the charge laid under s. 15 of the Road Traffic Act, 1930.

The third case quoted was that which appeared at 109 J.P.N. 117. In that case, a man appeared before Sir Gervais Rentoul, K.C., at the West London Metropolitan magistrate's court charged with an offence under s. 15. He attracted attention to himself by continuously sounding the horn of the car and when found by the police he was sitting in the back of the car which was parked in a cul-de-sac, obviously drunk. It was proved that the car belonged to a friend of his who had left him in the car in order to escort a third friend home. The owner of the car had removed the ignition key and the defendant stated that in any case he did not know how to drive a car. The learned magistrate dismissed the charge.

If the hearing of the case reported above had been postponed for a few days the attention of the magistrates could have, with advantage, been drawn to the article which appeared in the issue of the *Law Journal* dated November 3, 1950, at p. 606, where Mr. Whiteside, the learned editor of *Stone*, reviewed a number of decisions and devoted considerable thought to the meaning of the words "in charge of a motor vehicle."

In view of the divergent manner in which these words have been interpreted in magistrates' courts in different parts of the country it is greatly to be regretted that the High Court in the recent case of *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730, did not take the opportunity of issuing an authoritative ruling. It will be remembered that in that case the driver of a car who had taken two employees to a dance in the car left the dance hall because he did not dance, and consumed too much drink. He realized that he was under the influence of drink and entered the car, sitting in the passenger's seat, and he did not put the ignition key into the lock but rested in the car. The driver, having been convicted of an offence under s. 15 (1) and disqualified for holding a driving licence, appealed, and the learned Recorder of Birmingham removed the disqualification on the ground that the facts constituted "special reasons" within s. 15 (2) of the Act why the court should order that the driver be not disqualified for holding a driving licence. The Divisional Court, in upholding the learned Recorder's decision as to the presence of "special reasons," made no comment whether or not the conviction was a correct one.

In view of the heavy penalties which follow infringements of s. 15 it is very desirable that an authoritative ruling should be given as to the meaning of the vital words "in charge of."

It will be recalled that the maximum penalty for a first offence on summary conviction is four months' imprisonment or a fine of £50 and in the case of a second or subsequent conviction four months' imprisonment and a fine of £100 and further there must, unless there are present exceptional circumstances, be an order of disqualification for a period of twelve months for holding or obtaining a licence.

R.L.H.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

CRIMINAL LAW AMENDMENT

Before Parliament rose for Christmas, the House of Commons gave permission, under the Ten-Minute Rule, to Mrs. Barbara Castle (Blackburn, East) to bring in a Bill "to repeal the words in paras. (1) and (4) of s. 2 and para. (2) of s. 3 of the Criminal Law Amendment Act, 1885, which restrict the operation of those paragraphs in the case of a woman or girl who is a common prostitute or of known immoral character or whose usual place of abode is a brothel."

Mrs. Castle said that s. 2 (1) of the 1885 Act was designed to give special protection to the girl or woman under twenty-one years of age by making it a criminal offence to procure her to have sexual intercourse with a third party. Section 2 (4) made it a criminal offence to induce a girl or woman of full age to leave her usual place of abode and inhabit a brothel in this country or abroad. Under s. 3 (2), it was an offence to procure a woman or girl to have sexual intercourse by false pretences or by false representations. But in each case, no offence was committed if the girl was a prostitute or of known immoral character or if her usual abode was a brothel.

She said that it was intolerable that any woman or girl, because she followed a certain way of life, should be excluded from the protection given to other women, even though that way of life, prostitution, was not illegal under our law. If they wanted to curb the power of the procurer, they had to strike at the point where his exploitation was most effective, and that was among the prostitutes and the semi-professionals. To do that, they had to amend the 1885 Act. That was the practical case for the Bill.

But an important point of principle was also involved. She believed —and so did a large number of religious and social organizations of all creeds and shades of thought that had been working on the problem for a great many years—that it was wrong to withhold the protection of the law from any citizen on grounds of his or her moral character.

Permission to bring in the Bill was given without debate or division, and it was introduced by Mrs. Castle, supported by Mrs. Rees, Mrs. Hill, Mr. Mellish, Mr. W. T. Williams, Brigadier Prior-Palmer and Mr. Bowen.

ILLITERACY OF PRISONERS

At question time in the Commons, Mr. I. J. Pitman (Bath) asked the Secretary of State for the Home Department what percentage of juvenile delinquents and of men and women in prison were unable to read with understanding a newspaper or written instructions.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that about one *per cent.* of the total number of men and women received into prison during 1949 were reported, on a somewhat rough and ready assessment, as being either illiterate or able to read only imperfectly. He regretted that figures for juvenile delinquents in general were not available.

MAGISTRATE'S COURT, WESTMINSTER

Lt.-Col. D. M. Lipton (Brixton) asked the Secretary of State for the Home Department whether, in view of the congestion of cases in nearby and other Metropolitan magistrates' courts, he would arrange for the court at Rochester Row, Westminster, to be re-opened.

Replying in the negative, Mr. Ede said that that court was not usable because it was badly damaged during the war. As soon as the capital investment programme permitted, it was proposed, in accordance with the recommendations of the Departmental Committee which reported in 1937, to begin the building of larger court houses in order to relieve the congestion at some of the courts, but he was afraid that that was not at present possible.

PERSONALIA

APPOINTMENTS

Mr. G. M. Tiffin, assistant solicitor to the Metropolitan borough of Woolwich, has been appointed assistant solicitor to the Metropolitan borough of Lewisham. The previous holder of the post, Mr. E. A. Pakeman, has left the council's service to take up private practice at Coulsdon, Surrey.

Mr. David Hall, temporary legal assistant in the town clerk's department, Fulham borough council, has been appointed assistant solicitor. Mr. Hall, who is twenty-four years of age, served his articles with the town clerk of Fulham and was admitted in June of this year. He served in the Royal Navy from 1944 to 1947.

Miss B. J. Langridge, M.A., children's officer with the county borough of Dudley, has been appointed children's officer with the Oxfordshire county council.

Mr. Kenneth Hill has been appointed a probation officer in the Middlesex combined probation area. He has just completed the Home Office training course and this is his first appointment. During the war he served in the Merchant Navy.

Mr. E. W. Basford has been appointed senior probation officer for Bedfordshire. He held a previous appointment as a senior probation officer for the Luton area of Bedfordshire.

RETIREMENT

Miss F. M. Browne, a probation officer in the county of Middlesex, has retired after twenty-four years service in the county. Miss Browne was appointed in 1926, and the majority of her service has been at Uxbridge court.

NOTICES

The next court of quarter sessions for the borough of Blackpool will be held on January 2, 1951.

The next court of quarter sessions for the Isle of Ely county council will be held on January 3, 1951.

The next court of quarter sessions for the borough of Guildford will be held on January 6, 1951, at the Guildhall at 11 *a.m.*

REVIEWS

Oke's Magisterial Formulist. Second (Cumulative) Supplement to Thirteenth edition. By J. P. Wilson. London: Butterworth & Co. (Publishers) Ltd. and Shaw and Sons, Ltd. Price: Main work and supplements 85s. Supplement alone 10s. 6d.

In an unusually interesting preface to a supplement, Mr. Wilson recalls the fact that it is exactly 100 years since Mr. G. C. Oke compiled the first edition of the book which will always bear his name. The occasion for publishing it was the coming into force of two statutes, still in force, which introduced a new code of procedure in both indictable and summary cases. A whole series of precedence became necessary under the Indictable Offences Act, 1848 and the Summary Jurisdiction Act, 1848. From that time onwards, *Oke* has supplied the need for an ever growing number of forms of all kinds and there can hardly be a justices' clerk's office anywhere which has not a copy in constant use. From the beginning, there has been, as Mr. Wilson tells us, co-operation with justices' clerks, and many of the new forms in this supplement have been drawn as the result of correspondence with them. Some forms have been re-drawn so as to comply more strictly with certain observations of the Lord Chief Justice in an unreported case. Many others are entirely new, and arise out of recent legislation. The Justices of the Peace Act, 1949, has not yet given rise to many new forms. Mr. Wilson records the interesting fact that in 1864 Mr. Oke prepared a Justices of the Peace Bill, which, though it did not become law, may well have pointed the way to many reforms.

Index to the Town and Country Planning Act, 1947. By Ronald Collier, F.R.I.C.S. London: Chartered Auctioneers' and Estate Agents' Institute. Price 10s. 6d. post free.

This is the second edition of a valuable work prepared by Mr. Ronald Collier, whose name will be known to our readers as a collaborator, on the practical and practice side, in several law books. It covers the Act of 1947 itself, the statutory instruments thereunder, and the numerous practice notes, circulars, and official statements which have been issued. It is something of a shock at first, to find that before the Act has been two years in operation an index covering 140 large octavo pages can be compiled. True the items are, as in most indexes, of varying importance, and there are a few which some indexers would have omitted. But by and large the index will be extremely useful. Of course every textbook on the Act, and especially those for which periodical supplements are issued, will be indexed, and will tell the inquirer what information is available at a particular date, but there is always scope for some different index which will pick up items not noticed by its rivals. Mr. Collier, in preparing his for the purposes of his own profession, is quite likely to have noted matters which the purely legal indexer might overlook. We can see a good deal of scope for it, in our own work and in local government offices.

Delinquency and Human Nature. By D. H. Stott, Carnegie United Kingdom Trust, Comely Park House, Dunfermline, Fife.

This book, which is really the report of an investigation over a period of years, was not originally intended to be sold. The Carnegie Trust distributed it widely, free of cost, to public libraries and other institutions. Owing to the great demand for the book it has been put on sale at the nominal price of 5s., but it is not obtainable through the usual trade channels. It can be obtained only through the Trust office, to which orders, accompanied by remittances should be sent.

The Carnegie Trust decided in 1945 to commission Mr. Stott to conduct an inquiry into the problem of delinquency among young people by making close contact with a number of boys in an approved school. For this purpose he lived for some five years in the school and was virtually a member of the staff. From the warden and the staff he received all possible help, and he was enabled to learn much about the boys, with whom he evidently made friends and who gave him their confidence. Altogether he dealt with 102 boys. This book is really a full report of his observations and conclusions, the result of patient and sustained effort to find out the truth.

Before getting down to case histories, interviews and conclusions, the author clears the ground by stating what method he decided to adopt, what errors he guarded against and how he actually set to work. He believes that to find the main causes of juvenile and adolescent crime is to discover what leads to persistent crime in adult life, since it is well established that most habitual offenders took to crime in youth. This is why the title of the book is general and does not refer specifically to juvenile delinquency.

Mr. Stott is a psychologist and approached his subject from that point of view. Naturally, the book abounds in expressions used by psychologists and psychiatrists, but that does not mean that it's author regarded every boy as a psychological case in the popular sense, indeed he expressly disclaims such an attitude, though he necessarily regarded each case as a psychological study. Perhaps not everyone will agree with all his methods of interviewing and questioning, but it is obvious that he acted throughout with only two aims, to get at the cause of the trouble and to take every opportunity of offering friendship and help.

The book contains many case histories which add interest to the study, and, of course, help to substantiate arguments. Each chapter is preceded by a detailed statement of its contents and concludes with a summary of its arguments. The whole scheme of the work has been planned with great care and the book creates the impression that it was written as the investigation was conducted, without hurry and with opportunity for careful thought. It is an important addition to the literature upon the modern sciences of psychology and criminology.

Stephen's Digest of the Criminal Law (Indictable Offences). Ninth edition. By L. F. Sturge. London: Sweet and Maxwell, Ltd. Price £2 5s. net.

No doubt the principal reason for a new edition of *Stephen's Digest* was the coming into operation of the Criminal Justice Act, 1948, which made far-reaching changes in criminal law and procedure and has necessitated the re-writing of some portions of the work. Several other statutes have been passed which affect the criminal law and these are referred to, including two of 1950, so that the work is well up to date.

The familiar pattern of this remarkable book with its concise statements of the law in short articles followed by illustrations and with copious annotations and references to cases, has been preserved, as we hope it always will be. This digest, like the *Digest of the Law of Evidence* by the same great jurist, remains a classic example of the art of clear statement in the shortest possible form. Both are recognized as high authority, constantly quoted, invaluable to students and lawyers alike.

The present learned editor decided, in view of the important changes introduced by the Criminal Justice Act, 1948, to re-write the chapter on punishments.

To do this and to preserve the form and style of the rest of the book must have been a difficult task, but the learned editor has produced a chapter that is comprehensive and generally up to date. If we venture to call attention to one or two examples of statements, which seem to us seriously open to question, this is in no spirit of captious criticism, but in the hope that it may be of some service to readers, and perhaps to the editor in preparing any new edition.

Thus, the statement in art. 35 that a person under seventeen may be sent to an approved school for a period of three years or four months after compulsory school leaving age, whichever is the later, with a footnote referring to s. 71 (1) of the Children and Young Persons Act, 1933, is not strictly correct, because by s. 71 (2) a young person who has turned sixteen years of age is not to be detained for three years, but only until he becomes nineteen. At the end of the same article, where there is a reference to attendance centres, we think it would have been well to note that this form of punishment is limited to cases dealt with by courts of summary jurisdiction only.

A footnote to art. 37 states that in the case of felonies tried summarily, a general power to fine in lieu of imprisonment is conferred by the Summary Jurisdiction Act, 1879, s. 4, but on summary conviction the fine must not exceed £25. This ignores s. 24 of the Criminal Justice Act, 1925, which provides for a fine not exceeding £100 in the case of an adult for any indictable offence dealt with summarily in accordance with that section. By an evident slip, in art. 37 " under 16 " is given as the age of an offender whose parent may be ordered to pay his child's fine.

Article 48, which refers to restrictions on the punishment of young offenders, according to age, has a footnote " In this article the age specified means the offender's age on conviction and not his age at the time of the offence." This is true generally, but the article deals *inter alia* with the prohibition of a death sentence in the case of a person under eighteen years of age, and s. 16 of the Criminal Justice Act, 1948, amended the law by prohibiting such a sentence if it appears to the court that the defendant was under eighteen at the time when the offence was committed.

It is almost impossible, perhaps quite impossible, to think of any type of indictable offence which is not covered in the *Digest*. The classification of offences and the arrangement of the whole work make reference easy, even apart from the index. The more one uses *Stephen* the more one appreciates its value and unique quality.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Companies Act, 1948, s. 196—*Director holding also salaried post—Emoluments—Income tax.*

A director of a private company is also employed in the capacity of technical consultant under a ten years' contract of service. He receives no emoluments in respect of his services as a director but in accordance with the contract of service is paid a salary as technical consultant. The service contract also provides for the payment of hotel and travelling expenses. Owing to the remoteness of the company's works and the lack of public transport, the company has always made arrangements to transport him between his home and the company's premises. During the first six months of 1949 the company paid for the hire of a car for this purpose. Subsequently, the technical consultant bought a car and has since been paid a mileage allowance in respect of its use on company's business. This payment has included the mileage involved in travelling to and from his home and the company's premises. In preparing the trading and profit and loss account, the company's accountants have made the following entries:

"To director's remuneration as technical consultant—£X director's travelling benefit—£Y."

The figure of £Y represents the cost of the hired transport plus a mileage allowance paid in respect of the use of the privately owned car in travelling between home and the company's works. The accountants have apparently regarded the salary as technical consultant as being "other emoluments" within the meaning of s. 196 (2) (*b*) of the Companies Act, 1948.

An opinion is sought on the following points:

1. Is the sum of £X properly to be regarded as "other emoluments" within the meaning of s. 196 (2) (*b*) of the Companies Act, 1948?

2. If the answer to 1 is in the affirmative, should not the sum of £Y be regarded as "other emoluments," especially in view of the fact that the payments are made in accordance with the terms of a contract of service as technical consultant and not as a director?

3. Is the sum of £Y to be taken into account as being liable to income tax under Part IV of the Finance Act, 1948? ARR.

Answer.

1. Yes: the most ordinary illustration of "other emoluments" within s. 196 is where a director holds some other salaried post, and the object of the enactment is to make shareholders aware of what he gets in each capacity separately.

2. We should ourselves have taken, on the information given, the same view as you take. But we do not know what the accountants' reason is.

3. We think so, whatever the answer to question 2: *see* proviso (*b*) to s. 41 (3) of the Finance Act, 1948.

2.—The Firearms Act, 1937—*Prescribed certificate—Limit on purchase of ammunition.*

The Firearms Rules, 1937, S.R. & O. 1937, No. 250, made by the Secretary of State under s. 30 of the Firearms Act, 1937, prescribe the form of firearm certificate. Part 2 (iii) of such prescribed form makes provision for inserting the "total amount authorized to be purchased or acquired in three years." Having regard to the apparent limited power of a chief officer of police (s. 2 (3) of the Firearms Act, 1937), to condition the certificate as respects "the quantities" . . . (of ammunition) "authorized to be purchased and to be held at any one time thereunder," will you kindly say from where the power derives to fix the "total amount authorized to be purchased or acquired in three years"? ALY.

Answer.

We share the doubt implied in the query, about the *vires* of condition (iii). The corresponding form prescribed in S.R. & O. 1920, No. 1825, under the Act of 1920, did not contain the same condition but followed the statute. The consolidating Act of 1937 was preceded by the Firearms (Amendment) Act, 1936, and if it had been then intended to alter the prescribed conditions it would have been easy to obtain the necessary legislative authority. We cannot help suspecting, therefore, that the change from the condition of 1920 may have crept into conditions prescribed in 1937 by inadvertence. Whether a certificate holder has anything to gain by now challenging a condition which rightly or wrongly has been in use for thirteen years seems doubtful.

3.—Landlord and Tenant—*Agricultural holding—Notice to quit.*

A purchased in 1949 property comprising a cottage with one and a half acres of land subject to a tenancy. There is no tenancy agreement and the rent of £10 is paid half-yearly on May 13 and November 13. The rateable value is £3 approximately and the tenant has been in occupation since before 1939. He keeps a cow and uses the land for agricultural purposes. A now desires to obtain possession of the premises for his own use.

Your opinion is sought:

(*a*) As to whether twelve months' notice to quit should be given under the Agricultural Holdings Act, 1948, or whether six months' notice will be sufficient?

(*b*) If twelve months' notice is necessary, can the tenant also claim protection under the Rent Restrictions Acts? D. LEX.

Answer.

(*a*) Twelve months: Agricultural Holdings Act, 1948, s. 23.
(*b*) No: Agricultural Holdings Act, 1948, sch. 7.

4.—Landlord and Tenant—*Rent Restrictions Act—Recovery of possession—Lessor and lessee sharing kitchen, etc.*

A bought a house in 1948 from B (widow) who at the time of sale had a son C and his wife residing with her. The house was sold subject to C having one room downstairs and one room upstairs and joint use of kitchen for cooking and washing, light, and electric stove and the pantry, at a weekly rental. There is a separate entrance on side of house to kitchen, as well as the front door, but C and his wife in order to get to their front room and room upstairs, and to the pantry which is in the middle room occupied by A, pass through the middle room instead of using the side door and going along back, and re-entering the house by the front door. C and his wife object to the presence of A's wife in the kitchen to do her ironing and cooking, and do everything possible to hinder her by making objectionable remarks and criticizing her work, and when entering middle room to go to the pantry bang doors to the annoyance of A and his wife. C sometimes joins in the abuse but, when wife is present, he stands by and does nothing to stop her abusing A and his wife. The front room downstairs is rarely used, and no fires lighted therein for nearly a year and the room is therefore suffering from dampness. Having regard to para. (*h*) of the schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933—although A having become purchaser after September 1, 1939, can he successfully sustain an action against C for ejectment without providing C with alternative accommodation, on the grounds (*a*) that the sub-tenancy is not a protected tenancy, both parties having joint user of kitchen, pantry, electric stove, light, etc., stairway to upstairs rooms, (*b*) C and his wife's conduct amounts to a nuisance within para. (*b*) of the schedule, and (*c*) that the condition of part of house, front room, tenanted by rare user, amounts to neglect of that part of the house. A. FELIX.

Answer.

We assume from the question generally that the conditions of sale to A did not confer upon C any higher right than that of being accepted as A's tenant at a weekly rental when A went into possession; in other words, that A is not subject to any contractual restriction upon his giving C notice to quit. The degree of sharing seems enough to put the tenancy outside the Rent Restriction Acts altogether: *Neale* v. *Del Soto* [1945] 1 All E.R. 191. If so, the only difficulty in A's path is s. 7 of the Landlord and Tenant (Rent Control) Act, 1949, putting the tenancy, notwithstanding that the letting is unfurnished, within the limited protection of s. 5 of the Furnished Houses (Rent Control) Act, 1946, as extended by s. 11 of the Act of 1949 itself. On this view, it is not necessary to consider the schedule to the Act of 1933. If it had been necessary to do so, we should have advised that the conduct of C and Mrs. C, if proved, was a nuisance to adjoining occupiers, *viz.*, A and Mrs. A, but not that leaving a room without a fire was "neglect."

5.—Nurseries and Child Minders Regulation Act, 1948—*Scope of orders.*

This authority have been considering recently making orders under s. 2 of the Nurseries and Child Minders Regulation Act, 1948, imposing certain requirements upon persons who are registered under s. 1 (1) (*b*) of the Act as child minders. The interpretation of s. 2 (2) has caused some difficulty and an opinion would be appreciated on the following points.

1. Does this section mean that—(*a*) If an order is made requiring the child minder to receive in his home not more than say ten children, that number may be made up in any proportion of children under and over the age of five years and must include the child minder's own

children, if any ; (*b*) That provided there are any children at all under the age of five years then the person receiving them is registerable.

2. A child minder who is unassisted can competently care for not more than five children (based on the Ministry of Health figure for day nurseries) if she receives them for a whole day and has to provide meals, etc., and attend to their normal requirements. Most of the applicants wish to receive children only during the mornings. Is it within the scope of s. 2 (2) therefore to limit the number received by reference to a time basis, *e.g.*, "ten children provided they are not received for longer than three hours." ACM.

Answer.

1 (*a*). This seems the better reading ; the local authority can, it seems, adjust the number of "received" children according as other children (who are already there but not "received") will need more or less care. In other words, supposing that ten was a proper total when the household included two resident children aged twelve and thirteen, and no others, the ten might be reduced if the householder had two children aged six and seven, as well as if there were four children all near the upper limit as defined. (*b*) Yes, if the receiving is for reward.

2. We think this doubtful. The number specified is to be the maximum "at any time," and the requirement is penal. On the other hand, some householders might be willing to accept such a requirement, and, if the council consider it reasonable, we see no strong reason against imposing it and leaving the householder to appeal.

6. Private Street Works Act, 1892—*Street made up on one side—Apportionment on both sides.*

The carriageway and footpath on the north side of a private street have been made up and only minor works of maintenance will be necessary to enable the local authority to take them over as highways repairable by the inhabitants at large. The footpath on the south side has not been made up and the developers of the estate are desirous of completing the whole of the street works so that they can ask the local authority to take over the street as a highway repairable by the inhabitants at large. The developers are under covenant with some of the frontagers on the south side of the street to undertake the street works and they are prepared to carry out their covenant. Other frontagers on the south side of the street have been approached as to whether they are prepared to pay their share of making up the footpath on the south side of the street but they refused, and, accordingly, the developers have asked the local authority to apply the provisions of the Private Street Works Act, 1892, to the street. If this procedure is adopted, then the following questions arise in connexion with the apportionment of the street making expenses :

1. Must the whole of the street be treated as a whole and the expenses charged upon frontagers both on the north and south sides of the street ? If so, then the frontagers on the north side will be called upon to pay a portion of the cost of making the footway on the south side, despite the fact that they have formerly paid to the developers the cost of making up the footway on their side of the street.

2. Is it possible for the local authority to arrange for the developers to carry out minor maintenance works on the carriageway and footpath on the north side so that these could be taken over as highways repairable by the inhabitants at large and then apply the Private Street Works Act, 1892, just to the footpath on the south side of the street, and, if so, what would be the position then with regard to the apportionment of the expenses of making the footway on the south side of the street ? Could the apportionment be made only upon the frontagers to the unmade footway, and would the local authority be liable to make a contribution in respect of the highway frontage, or would the expenses of making the footway still be a charge on the frontagers of both sides of the street ?

3. If the frontagers on the north side of the street are liable to contribute towards the cost of making the footway on the south side of the street, is it possible for the local authority to give a credit to the frontagers on the north side for work already done by them in connexion with the whole of the street, and, if so, what is the appropriate credit. It appears that if such a credit is given, then that credit will reduce the total expenses incurred on the street thus reducing the expenditure which could be charged upon the frontagers on the south side of the street, and, therefore, it would mean that the local authority would have to pay for this credit. ARN.

Answer.

1. If the Private Street Works Act, 1892, is applied to the whole street, whether in one stage or in two stages, it seems that the expenses must be apportioned upon frontagers on both sides : *Clacton Local Board* v. *Young* (1895) 59 J.P. 581.

2. We do not see anything to prevent the council from agreeing to take over the parts (longitudinally considered) which are ready, without applying the Act. When they come to apply the Act to the southernmost strip, it appears to be a moot point whether the expense must be apportioned upon frontagers on both sides : *Mile End Old Town* v. *Whitechapel Guardians* (1876) 41 J.P. 20. We do not think the council can, in virtue of having already taken over the adjacent strip, be regarded as frontagers upon the southernmost strip if that be made up alone : *Standing* v. *Bexhill Corporation* (1909) 73 J.P. 241, relating to tram lines in a street. It would be so evidently unfair upon the northern frontagers, to charge them for the southern strip after they (without the southern frontagers) have paid for the northern and middle strips, that we should be inclined to adopt this plan—*i.e.*, take over the northern and middle strips without using the Act, and afterwards use the Act for the southern strip alone, in reliance on the words "part of a street" ; leaving the southern frontagers to challenge this course if so advised.

3. We do not see how to work this, but the need for doing so will not arise if the thing be done as we suggest.

7. Public Health Act, 1936, s. 39—*Council doing drainage work—Easements to cross land.*

The council have served a notice under the provisions of s. 39 of the Public Health Act, 1936, requiring the owner of a dwelling-house to lay a drain and connect it to the council's sewer. To comply with this notice the owner must lay the drain through land lying between his property and the sewer and owned by three separate owners. The owner has not complied with the notice, and the council are proposing to carry out the work under the provisions of s. 290 (6). The owner has intimated his willingness to pay the cost of the work, but the council prefer to proceed under s. 290 rather than under s. 275. The three owners concerned have each written the council's surveyor intimating they have no objection to the drain being laid through their respective land and subject to certain assurances which can be given.

The question arises of obtaining easements for the laying of the drain and your opinion is sought on the following points :

1. In view of the powers conferred on a local authority under s. 290 (6) to execute works, is it necessary for easements to be obtained from the three adjoining landowners ?

2. If the reply to (1) is in the affirmative, should such easements be obtained by (*a*) the council, or (*b*) the owner of the house ?

3. If easements must be obtained by the council, should the deed of grant be in favour of the owner of the house ?

4. If the council obtain such easements, can the costs involved be regarded as expenses recoverable from the owner of the house under s. 290 (6) ?

5. Can the letters written by the three landowners be regarded as adequate grants of easement, or should formal deeds of grant be executed so as to bind successors in title of the land, and give adequate power to the owner of the house to resist possible action for trespass in the future ?

6. Would the position regarding easements be different if the council proceeded under s. 275 ? E.H.S.

Answer.

1. We think so.
2. The council.
3. The owner.
4. Yes.
5. Formal grant is in our opinion necessary.
6. We think not. In each case they are doing the work for him ; the easements are of value to him, not to the council, and are, in our opinion, something for which he must pay.

8. Public Health Act, 1936—*Sewer—Pump inserted—Whether part of sewer.*

Could you please inform me whether in your opinion an automatic electric pump and pumping chamber on a line of sewer forms part of the sewer or of the sewerage disposal works for the purpose of a s. 15 notice as opposed to land acquistion ? The sewer is by gravity to the pump, thence by rising main to the top of a ridge, and again by gravity picking up further properties on the way to the disposal works. The pump is in a concrete chamber mostly underground but protrudes approximately three feet above ground, with a manhole for access, and the concrete chamber is approximately ten feet in diameter. A. JMD.

Answer.

Physically, this object looks much like the engine in *King's College, Cambridge* v. *Uxbridge R.D.C.*, (1901) 85 L.T. 303. But by s. 90 (4) of the Act of 1936 "pumps or other accessories belonging to a sewer" are included in the reference to sewers in s. 15. Looking to this, and to the fact that, after the pump, the sewer picks up further properties, we incline to advise that the pump is part of the sewer.

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